

David J. Miclean  
(#115098/miclean@fr.com)  
FISH & RICHARDSON P.C.  
500 Arguello Street, Suite 500  
Redwood City, California 94063  
Telephone: (650) 839-5070  
Facsimile: (650) 839-5071

James M. Wagstaffe  
Kerr & Wagstaffe LLP  
100 Spear Street, Suite 1800  
San Francisco, CA 94105-1528  
Telephone: (415) 371-8500  
Facsimile: (415) 371-0500

Lisa M. Martens  
(#195824/martens@fr.com)  
Andrew M. Abrams  
(#229698/abrams@fr.com)  
FISH & RICHARDSON P.C.  
12390 El Camino Real  
San Diego, California 92130  
Telephone: (858) 678-5070  
Facsimile: (858) 678-5099

James E. Magleby  
Jason A. McNeill  
Magleby & Greenwood, P.C.  
170 South Main Street, Suite 350  
Salt Lake City, UT 84101-3606  
Telephone: (801) 359-9000  
Facsimile: (801) 359-9011

Attorneys for Plaintiff and  
Counterclaim Defendant  
**APPLE INC.**

Attorneys for Defendants  
and Counterclaim Plaintiff  
Podfitness, Inc.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
(OAKLAND DIVISION)

APPLE INC.,

Case No. C 06-5805 SBA

**Plaintiff,**

**STIPULATED REQUEST FOR ORDER  
CHANGING TIME**

PODFITNESS, INC., and DOES 1-100,  
inclusive.

Honorable Saundra B. Armstrong

## Defendants.

## PODFITNESS, INC.,

## Counterclaim Plaintiff

V.

APPLE INC.

#### Counterclaim Defendant

Pursuant to Local Rule 6-2, Plaintiff and Counterclaim Defendant Apple Inc. ("Apple") and Defendant and Counterclaim Plaintiff Podfitness, Inc. ("Podfitness") file this stipulation requesting an enlargement of the schedule in this case. In support of this stipulation, the parties submit the declaration of James E. Magleby, counsel for Podfitness, which sets forth the facts that necessitated the requested enlargement. The parties believe good cause for the enlargement exists for the following reasons.

**A. FILING OF AMENDED COMPLAINT AND COUNTERCLAIM**

Since the Court's January 25, 2007 Order for Pretrial Preparation setting forth the original trial schedule, the scope of this matter has expanded. On August 1, 2007, Apple filed an amended complaint adding causes of action for cybersquatting and for breach of contract. Magleby Decl.,

¶ 2. Apple's amendment arose from new information uncovered during the discovery process. *Id.* Podfitness answered the amended complaint on August 31, 2007, and counterclaimed, alleging intentional and negligent interference with contractual relations, negligent interference with prospective economic advantage, and unlawful, unfair and deceptive practices in violation of the California Business and Professions Code. Podfitness' counterclaims arose from conduct which purportedly occurred during the discovery process, and after the scheduling order had been put into place. Magleby Decl., ¶ 3. Both Apple's new claims and Podfitness' new counterclaims invoke the need for additional discovery. Further, pursuant to Podfitness' efforts to obtain new counsel and the courts order staying this action, discovery has not gone forward for several months.

**B. WITHDRAWAL OF PODFITNESS' COUNSEL AND STAY OF THE PROCEEDINGS**

On September 19, 2007, Podfitness' outside counsel, Workman Nydegger, filed its motion to withdraw as counsel. Subsequently, on October 16, 2007, in-house counsel for Podfitness, Steve Hutchinson, filed notice with the Court that he was no longer employed with Podfitness. Magleby Decl., ¶ 4. On October 31, 2007, the Court permitted a withdrawal of outside counsel and ordered a temporary stay of the case for thirty (30) days pending Podfitness' engagement of substitute counsel. *Id.* Podfitness retained Magleby & Greenwood, P.C. as new outside counsel

1 on November 30, 2007, and retained local California counsel, Kerr & Wagstaffe, LLP on  
2 December 6, 2007. Magleby Decl., ¶ 5.

3 During this time, in the months of August, September, October and November 2007, the  
4 parties participated in numerous settlement negotiations. Magleby Decl., ¶ 6. Ultimately, the  
5 parties did not succeed in reaching a settlement. *Id.* As such, the parties now must reschedule the  
6 discovery activities that were postponed during the stay of the action. Further, new counsel for  
7 Podfitness requires additional time to review Apple's document production and propound  
8 additional discovery.

9 **D. PROPOSED SCHEDULE WITH EXTENDED DEADLINES**

10 To allow the parties adequate time to complete discovery and prepare for trial, the parties  
11 have stipulated and agreed to the following schedule:

Fact discovery closes	May 23, 2008
Last day to designate experts and to submit reports on those issues the party bears the burden of proof	June 17, 2008
Last day to serve rebuttal expert reports	July 25, 2008
Expert discovery closes	August 22, 2008
Deadline for dispositive motions to be filed	August 19, 2008
Deadline for dispositive motions to be heard	September 23, 2008
Settlement conference	September 29 to October 24, 2008
Filing of pretrial preparation due	October 7, 2008
Motions in Limine and Objections to Evidence due	October 28, 2008
Responses to Motions in Limine and Objections due	November 4, 2008
Pretrial conference	November 18, 2008
Jury trial begins	December 1, 2008

1 There have been no prior modifications to the schedule set forth in the Court's January 25,  
2 2007 Order. Magleby Decl., ¶ 7. The requested time modification would re-set the entire  
3 schedule for this case, and the parties would be prepared to try the case on December 1, 2008. *Id.*

4 Based on the foregoing, the parties respectfully request that the Court grant the parties  
5 stipulated request.

6 Dated: January 7, 2008

FISH & RICHARDSON P.C.

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8 By: /s/ David J. Miclean  
9 David J. Miclean

10 Attorneys for Plaintiff and  
11 Counterclaim Defendant  
12 APPLE INC.

13 Dated: January 7, 2008

MAGLEBY & GREENWOOD, P.C.

14 By: /s/ James E. Magleby  
15 James E. Magleby

16 Attorneys for Defendants and  
17 Counterclaim Plaintiff  
18 PODFITNESS, INC.

**DECLARATION OF CONSENT**

19 Pursuant to General Order No. 45, Section X(B) regarding signatures, I attest under  
20 penalty of perjury that concurrence in the filing of this document has been obtained from James  
21 E. Magleby.

22 Dated: January 7, 2008

FISH & RICHARDSON P.C.

23

24 By: /s/ David J. Miclean  
25 David J. Miclean

26 Attorneys for Plaintiff and  
27 Counterclaim Defendant  
28 APPLE INC.

1 PURSUANT TO STIPULATION, IT IS SO ORDERED:  
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4 Dated: \_\_\_\_\_  
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United States District Judge

**PROOF OF SERVICE**

I am employed in the County of San Diego. My business address is Fish & Richardson P.C., 12390 El Camino Real, San Diego, California 92130. I am over the age of 18 and not a party to the foregoing action.

I am readily familiar with the business practice at my place of business for collection and processing of correspondence for personal delivery, for mailing with United States Postal Service, for facsimile, and for overnight delivery by Federal Express, Express Mail, or other overnight service.

On January 7, 2008, I caused a copy of the following document(s):

**STIPULATED REQUEST FOR ORDER CHANGING TIME**

to be served on the interested parties in this action by placing a true and correct copy thereof, enclosed in a sealed envelope, and addressed as follows:

James M. Wagstaffe  
Kerr & Wagstaffe LLP  
100 Spear Street, Suite 1800  
San Francisco, CA 94105-1528  
Telephone: (415) 371-8500  
Facsimile: (415) 371-0500

Atorneys For Defendant  
PODFITNESS, INC.

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170 South Main Street, Suite 350  
Salt Lake City, UT 84101-3606  
Telephone: (801) 359-9000  
Facsimile: (801) 359-9011

Atorneys For Defendant  
PODFITNESS, INC.

**X** **MAIL:** Such correspondence was deposited, postage fully paid, with the United States Postal Service on the same day in the ordinary course of business.

**ELECTRONIC MAIL:** Such document was transmitted by electronic mail to the addressees' email addresses as stated above.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the above is true and correct. Executed on January 7, 2008, at San Diego, California.

/s/Nicole C. Pino

Nicole C. Pino